

AMENDED IN SENATE APRIL 20, 2009

SENATE BILL

No. 51

Introduced by Senator Ducheny

(Coauthor: Senator Steinberg)

(Coauthors: Assembly Members V. Manuel Perez and Salas)

January 13, 2009

An act to add the heading to Article 1 (commencing with Section 2930) of, and to add Article 2 (commencing with Section 2940) to, Chapter 13 of Division 3 of, the Fish and Game Code, relating to the Salton Sea Restoration Council.

LEGISLATIVE COUNSEL'S DIGEST

SB 51, as amended, Ducheny. Salton Sea Restoration Council.

Existing law requires the Secretary of the *Natural* Resources Agency, in consultation with the Department of Fish and Game, the Department of Water Resources, the Salton Sea Authority, appropriate air quality districts, and a specified advisory committee, to undertake a restoration study to determine a preferred alternative for the restoration of the Salton Sea ecosystem and the protection of wildlife dependent on that ecosystem. Existing law establishes the Salton Sea Restoration Fund, which is administered by the Director of Fish and Game, and requires the moneys in that fund to be expended, upon appropriation by the Legislature, for various actions on behalf of the Salton Sea, including the implementation of the preferred Salton Sea restoration alternative.

This bill would establish the Salton Sea Restoration Council as a state agency in the *Natural* Resources Agency to implement certain preferred alternative activities set forth in the agency's Salton Sea Ecosystem Restoration Program, to develop and implement, or finance, additional pilot or demonstration projects to improve the water quality of the Salton

Sea, to restore the Salton Sea ecosystem, and to take other actions to enhance the sea.

The bill would prescribe requirements relating to the composition and administration of the council. The council would be required to include an executive committee, a science committee, a local government forum, and a stakeholder forum, as specified.

The executive committee would be required to serve as the governing body of the council, and would be required to provide guidance and oversight on behalf of the restoration program. The Department of Fish and Game would be required to provide staff services that the council requires to carry out its activities and to enter into interagency agreements with the Department of Water Resources and other state agencies to provide staff services.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Article 1 (commencing with
2 Section 2930) is added to Chapter 13 of Division 3 of the Fish and
3 Game Code, to read:

4
5 Article 1. General Provisions

6
7 SEC. 2. Article 2 (commencing with Section 2940) is added
8 to Chapter 13 of Division 3 of the Fish and Game Code, to read:

9
10 Article 2. Salton Sea Restoration Council

11
12 2940. The Legislature finds and declares all of the following:

13 (a) The Salton Sea is California's largest inland water body with
14 beneficial uses that include fisheries and wildlife habitat,
15 preservation of endangered species, and a repository for agricultural
16 drainage.

17 (b) The Salton Sea ecosystem is a critical link on the
18 international Pacific Flyway and supports over 400 species of
19 birds.

20 (c) The Salton Sea is threatened by increasing salinity and
21 reduced inflows. These changes increasingly threaten unparalleled
22 wildlife resources at the sea, as well as air quality in the region.

(d) In cooperation with local governments, nonprofit organizations, private business, and the public, the Salton Sea Restoration Council can help protect wildlife habitats and endangered species, improve water and air quality, and enhance recreational opportunities in the region.

2941. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this article.

(a) “Agency” means the *Natural* Resources Agency.

(b) “Controlled eutrophication project” means a nutrient reduction process that assimilates nutrients into algal biomass, and physically removes or harvests the algal biomass from the water column.

(c) “Council” means the Salton Sea Restoration Council.

(d) “Final PEIR” means the *Natural* Resources Agency’s Salton Sea Ecosystem Restoration Program Final Programmatic Environmental Impact Report, dated May 2007.

(e) “Habitat mosaics” means two or more proximate habitat types, such as saltwater shoreline abutting riverine deltas and irrigated farmland.

(f) “Salton Sea watershed” means the geographic boundaries of the Salton Sea basin, defined as the United States Geologic Survey Hydrologic Unit 18100200 (“Salton Sea”).

(g) “Sea” means the Salton Sea.

(h) “Secretary” means the Secretary of the *Natural* Resources Agency.

(i) “Upper Basin” refers to the four Colorado River states of the Upper Division, including Colorado, New Mexico, Utah, and Wyoming.

(j) “Upper Basin selenium reduction projects” means projects of the Gunnison Basin Task Force and Grand Valley Selenium Task Force and other similar Upper Basin source control projects that could decrease the total amount of selenium in the inflows to the Salton Sea.

(k) “Vector management” means services that eliminate or reduce the risk of illness caused by any organism transporting a pathogen.

2942. There is in the *Natural* Resources Agency the Salton Sea Restoration Council, which is established as a state agency to carry out, to the maximum extent possible, all of the following,

1 working in collaboration with local governments and interested
2 parties:

3 (a) Give first priority to implementing each of the agency's
4 Salton Sea Ecosystem Restoration Program Preferred Alternative
5 "Period I" activities, as described in Chapter 3 of Volume I of the
6 Final PEIR, to the extent that these activities have not already been
7 completed by other entities. The activities identified in "Period I"
8 include conducting a demonstration project, "early start habitat,"
9 conducting additional biological, inflow, sediment quality, water
10 quality, and air quality investigations, conducting geotechnical
11 and hazards surveys and analyses, coordinating with the Torres
12 Martinez Band of Desert Cahuila Indians and other stakeholders,
13 executing land access and utility agreements, and preparing project
14 level environmental documentation and final design.

15 (b) Implement, as funding is made available for those purposes,
16 the remaining priorities identified in subdivisions (c) to (k),
17 inclusive.

18 (c) Develop and implement or finance additional pilot or
19 demonstration projects to assess the efficacy of methods to improve
20 water quality of the Salton Sea, including, but not limited to, both
21 of the following:

22 (1) Controlled eutrophication projects.

23 (2) Upper Basin selenium reduction projects.

24 (d) Restore the Salton Sea ecosystem.

25 (e) Permanently protect the fish and wildlife dependent on the
26 Salton Sea ecosystem.

27 (f) Restore the long-term stable aquatic and shoreline habitat to
28 achieve the historic levels and the diversity of fish and wildlife
29 that depend on the Salton Sea.

30 (g) Eliminate air quality impacts from the restoration projects
31 using the best available technology as defined by the South Coast
32 Air Quality Management District and the Imperial County Air
33 Pollution Control District.

34 (h) Protect water quality.

35 (i) Maintain the sea as a vital link along the international Pacific
36 Flyway.

37 (j) Preserve local tribal heritage and cultural values associated
38 with the sea.

39 (k) Eliminate noxious odors and other water and air quality
40 problems.

1 (l) Implement the agency's Salton Sea Ecosystem Restoration
2 Program Preferred Alternative, as revised *during the*
3 *implementation process*, working in collaboration with local
4 governments and interested parties to address funding constraints
5 and other related matters.

6 2943. The council may take into consideration, to the extent
7 each is compatible with the actions described in Section 2942,
8 both of the following:

9 (a) Project components that promote the sea as a tourist
10 destination and recreational area.

11 (b) Project components that are compatible with economic
12 development associated with the restoration plan.

13 2944. (a) The council shall consist of the following groups:

14 (1) An executive committee.

15 (2) A science committee.

16 (3) A local government forum.

17 (4) A stakeholder forum.

18 (b) The executive committee shall consist of 14 voting members
19 and ~~seven~~ *eight* nonvoting members, appointed or designated as
20 follows:

21 (1) The 14 voting members of the executive committee shall
22 consist of all of the following:

23 (A) The Director of Fish and Game.

24 (B) The Director of Water Resources.

25 (C) The Director of Parks and Recreation.

26 (D) The Chairperson of the State Water Resources Control
27 Board.

28 (E) The Chairperson of the State Air Resources Board.

29 (F) One public member appointed by the Governor, who is not
30 an elected official and who represents a statewide public health
31 organization.

32 (G) One public member appointed by the Speaker of the
33 Assembly, who is not an elected official and who represents a
34 statewide hunting or fishing organization.

35 (H) One public member appointed by the Senate Committee on
36 Rules, who is not an elected official and who represents a statewide
37 environmental organization.

38 (I) One member from, and selected by, the Imperial County
39 Board of Supervisors, if that board agrees to do so.

1 (J) One member from, and selected by, the Riverside County
2 Board of Supervisors, if that board agrees to do so.

3 (K) One member from, and selected by, the Board of Directors
4 of the Coachella Valley Water District, if that board agrees to do
5 so.

6 (L) One member from, and selected by, the Board of Directors
7 of the Imperial Irrigation District, if that board agrees to do so.

8 (M) One member selected by the Tribal Council of the Torres
9 Martinez Band of Desert Cahuilla Indians, if that council agrees
10 to do so.

11 (N) One member selected by the Tribal Council of the Cabazon
12 Band of Mission Indians, if that council agrees to do so.

13 (2) The members appointed pursuant to subparagraphs (F) to
14 (H), inclusive, of paragraph (1) shall serve one term of four years,
15 and may be reappointed to one additional term.

16 (3) A state, local, or tribal official who is a member of the
17 executive committee may designate a member of his or her
18 executive staff to vote on his or her behalf and otherwise discharge
19 the duties of the member when the member is not in attendance.
20 Notice of this designation shall be promptly communicated in
21 writing to the chairperson of the executive committee.

22 (4) The nonvoting members of the executive committee shall
23 consist of all of the following, as they may be available:

24 (A) The lead scientist.

25 (B) One representative of the United States Environmental
26 Protection Agency.

27 (C) One representative of the United States Bureau of
28 Reclamation.

29 (D) One representative of the United States Fish and Wildlife
30 Service.

31 (E) One representative of the United States Army Corps of
32 Engineers.

33 (F) One representative of the United States Geological Survey.

34 (G) One representative of the Bureau of Land Management.

35 (H) *One representative of the United States Department of*
36 *Defense.*

37 (c) (1) The science committee shall consist of the lead scientist
38 and national and locally recognized experts familiar with
39 large-scale wetlands and marine restoration efforts and
40 knowledgeable about the application of adaptive management

1 protocols and long-term monitoring. The science committee shall
2 also include experts in dike design and dredging, water treatment,
3 and hydraulics.

4 (2) (A) The lead scientist shall be appointed by the United
5 States Geological Survey Salton Sea Science Office, if that office
6 agrees to do so.

7 (B) If the United States Geological Survey Salton Sea Science
8 Office does not appoint the lead scientist, the lead scientist shall
9 be appointed by the executive committee.

10 (C) The lead scientist shall nominate other experts for
11 membership on the science committee, subject to confirmation by
12 the executive committee.

13 (d) The local government forum shall include elected
14 representatives from within the Salton Sea watershed, if the
15 governing body of the respective local government agrees to
16 appoint a designee to the forum, and may include local air pollution
17 control officials. The council shall request the Salton Sea Authority
18 to assist the council by doing all of the following:

19 (1) Inviting local elected representatives to join the forum.

20 (2) Convening and organizing regular meetings of the forum.

21 (3) Transmitting information from the executive committee to
22 the forum.

23 (4) Transmitting recommendations and suggestions from the
24 forum to the executive committee.

25 (e) The stakeholder forum shall consist of interested parties, as
26 determined by the executive committee, with demonstrated
27 long-term, ongoing interest in the restoration plan and shoreline,
28 representing the following categories:

29 (1) Persons associated with local businesses and community
30 service districts.

31 (2) Farmers.

32 (3) Persons associated with environmental organizations.

33 (4) Persons associated with public access and recreational
34 interests.

35 (5) Persons associated with public infrastructure.

36 (6) Community advocates.

37 (7) Persons associated with geothermal companies.

38 (8) Persons associated with public works.

39 (9) Public health officials.

40 (10) Tribal and elected local and state officials.

1 2945. (a) (1) The executive committee shall serve as the
2 governing body of the council and shall provide overall guidance
3 and oversight on behalf of the restoration program. *The members*
4 *of the executive committee shall serve without compensation.*

5 (2) The executive committee shall provide the overall leadership
6 for the planning of the restoration program. The Department of
7 Fish and Game shall implement and be responsible for all
8 components of the planning, including, but not limited to, all of
9 the following:

- 10 (A) Overall plan design.
- 11 (B) Project proposal review and selection.
- 12 (C) Contracting.
- 13 (D) Land access and acquisition of easements.
- 14 (E) Project management.
- 15 (F) Biological and physical monitoring, including air quality.
- 16 (G) Public participation and outreach.
- 17 (H) Public policy impacts and analysis.
- 18 (I) Budgeting.
- 19 (J) Dispute resolution.
- 20 (K) Integration of the planning process with air quality
21 management, public health, and other regulatory entities.
- 22 (L) Governmental relations.

23 (3) The executive committee shall make decisions by a
24 two-thirds majority of the total number of voting members. If a
25 conflict exists, a voting member shall recuse himself or herself
26 from voting on an item.

27 (4) (A) The voting members of the executive committee shall
28 elect, annually from among the voting members, a chairperson, a
29 vice chairperson, and other officers as necessary. The officers may
30 be reelected.

31 (B) The offices of chairperson and vice chairperson shall not
32 be held concurrently by any of the persons in the following
33 categories:

34 (i) Persons identified in subparagraphs (A) to (E), inclusive, of
35 paragraph (1) of subdivision (b) of Section 2944.

36 (ii) Persons identified in subparagraphs (F) to (H), inclusive, of
37 paragraph (1) of subdivision (b) of Section 2944.

38 (iii) Persons identified in subparagraphs (I) to (N), inclusive,
39 of paragraph (1) of subdivision (b) of Section 2944.

1 (C) If the office of chairperson or vice chairperson becomes
2 vacant, a new chairperson or vice chairperson shall be elected by
3 the voting members of the executive committee to serve for the
4 remainder of the term.

5 (D) Ten of the voting members shall constitute a quorum for
6 the transaction of the business of the executive committee. The
7 executive committee shall adopt rules, regulations, and procedures
8 for the conduct of business by the executive committee.

9 (5) The executive committee shall hold the majority of its
10 regularly scheduled meetings within the Salton Sea watershed.

11 (b) The science committee shall do all of the following:

12 (1) Provide best available science and engineering oversight to
13 the overall planning and implementation processes.

14 (2) Provide periodic review of local technical investigations
15 pertaining to the restoration plan design and implementation.

16 (3) Consult with and advise the stakeholder forum, under the
17 direction of the lead scientist.

18 (4) Provide guidance on ongoing short-term planning activities.

19 (5) Develop a science program for the collection, synthesis, and
20 dissemination of best available science to support long-term
21 restoration activities and adaptive management.

22 (c) The local government forum shall facilitate communication
23 between local governments and landowners, the executive
24 committee, and the stakeholder forum on the progress of plan
25 development and implementation.

26 (d) (1) The stakeholder forum shall provide ongoing, publicly
27 derived input to the executive committee relating to habitat
28 objectives and actions, types and levels of public access, and
29 integration of air quality management and habitat restoration.

30 (2) The stakeholder forum shall assist the executive committee
31 and other council members to gain a broader understanding of
32 public and interest group perspectives.

33 (3) The stakeholder forum shall provide focused review and
34 discussion, and shall seek to achieve consensus on significant
35 matters, including the following:

36 (A) Discussion and general agreement on design opportunities
37 and constraints, and integration of the habitat, public access, and
38 air quality management objectives.

39 (B) Public access and recreational components.

40 (C) Opportunities for economic development.

1 (D) Habitat mosaics and location.

2 (E) Vector management and predator control.

3 (e) All members of the executive committee and the science
4 committee may be reimbursed for their actual and necessary
5 expenses, including travel expenses, incurred in attending meetings
6 of the council and the respective committee and carrying out the
7 duties of their office.

8 (f) The Salton Sea Restoration Council may do the following:

9 (1) Sue and be sued.

10 (2) Enter into contracts pursuant to Article 4 (commencing with
11 Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of
12 the Government Code, for services requiring knowledge,
13 experience, and ability not possessed by the council's staff.

14 (3) Enter into other agreements with public agencies, private
15 entities, and persons necessary for the proper discharge of its duties.

16 (g) (1) Only funds deposited in the Salton Sea Restoration Fund
17 or nonstate funds may be expended to carry out this article.

18 (2) The status of the Salton Sea Restoration Fund shall be
19 included in the Governor's proposed annual budget document.

20 (3) The council shall advise the Director of Fish and Game with
21 regard to the expenditure of funds from the Salton Sea Restoration
22 Fund.

23 2946. (a) (1) The secretary shall select, in consultation with
24 the executive committee, the executive director of the council.

25 (2) The executive director shall be exempt from civil service
26 and shall serve at the pleasure of the executive committee.

27 (3) For purposes of this article, the executive director shall be
28 an employee of the *Natural* Resources Agency.

29 (b) The Department of Fish and Game shall provide the staff
30 services, using staff currently dedicated to Salton Sea activities or
31 other staff provided by legislative action, that the council requires
32 to carry out its functions, including, but not limited to, all of the
33 following:

34 (1) Administering grants and expenditures made available to
35 the council from the Salton Sea Restoration Fund or other sources,
36 including, but not limited to, block grants from other state boards,
37 commissions, or departments.

38 (2) Administering contracts.

39 (3) Arranging meetings, agendas, and other administrative
40 functions.

1 (4) Communication and public outreach, including all of the
2 following:

3 (A) Public meetings with interested parties, presentations, and
4 workshops.

5 (B) A regularly updated project-specific Web site.

6 (C) Electronic mail and paper newsletters in English and
7 Spanish.

8 (5) Conducting biological investigations.

9 (c) The Director of Fish and Game and the Director of Water
10 Resources shall enter into interagency agreements with each other
11 to provide the staff service, using staff currently dedicated to Salton
12 Sea activities or other staff provided by legislative action, to carry
13 out the functions of the council.

14 (d) The Director of Fish and Game shall enter into interagency
15 agreements with other state agencies to provide the staff services,
16 using staff currently dedicated to Salton Sea activities or other
17 staff provided by legislative action, to carry out the functions of
18 the council.

19 2947. (a) The council's jurisdiction is limited to the Salton
20 Sea watershed within the State of California.

21 (b) This article does not grant to the council any of the following
22 authority:

23 (1) Any authority of a city or county or tribal government to
24 regulate land use.

25 (2) Any authority to regulate activities on land, unless the
26 regulation is carried out pursuant to an agreement with an owner
27 of an interest in the land.

28 (3) Authority over water rights held by others.

29 (4) Any air quality regulatory authority.